JOHN E. DAVIS, JR., & MARYBETH PRITSCHET DAVIS, *ET AL.*

187 IBLA 103 Decided February 24, 2016

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Interior Board of Land Appeals
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JOHN E. DAVIS, JR., & MARYBETH PRITSCHET DAVIS, *ET AL.*

IBLA 2014-35 *et al.* Decided February 24, 2016

Appeals from decisions of the Associate State Director, Eastern States Office, Bureau of Land Management, dismissing as untimely protests to the offering of Federal oil and gas resources for competitive lease sale. ES-001-09/13 through ES-021-09/13 (MIES-057798 ACQ through MIES-057818 ACQ).

Affirmed.

1. Oil and Gas Leases: Competitive Leases–Rules of Practice: Protests

   BLM properly dismisses as untimely a protest to the offering of nominated Federal oil and gas resources for competitive lease sale, when it was filed more than 30 calendar days after the posting of the sale notice, as required in the Notice of Competitive Oil and Gas Lease Sale.

APPEARANCES: Jeffrey K. Haynes, Esq., Bloomfield Hills, Michigan, for John E. Davis, Jr., and Marybeth Pritschet Davis; Cynthia Vigneron, Delton, Michigan, *pro se*; Steve Losher, Delton, Michigan, for Michigan Land Air Water Defense; Stephen G. Mahoney, Esq., Office of the Solicitor, U.S. Department of the Interior, Pittsburgh, Pennsylvania, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

John E. Davis, Jr., and Marybeth Pritschet Davis and others (Appellants) have appealed from separate September 6, 2013, decisions of the Associate State Director (ASD), Eastern States Office (ESO), Bureau of Land Management (BLM), dismissing their protests of a Decision Record (DR) dated June 12, 2013.[1] In the DR,

[1] This matter involves three separate appeals filed by the Davises (IBLA 2014-35), Cynthia Vigneron (IBLA 2014-38), and Michigan Land Air Water Defense (MLAWD) (... continued)

the ASD decided to offer a total of 27,212 acres of Federal oil and gas resources in Allegan County, Michigan, for competitive lease sale. The ASD dismissed the protests because they were not filed timely, *i.e.*, as specified in the June 14, 2013, Notice of Competitive Oil and Gas Lease Sale (Sale Notice). The DR was based on a March 22, 2013, Environmental Assessment (EA) (DOI-BLM-ES-0030-2013-0002-EA), which was prepared by the Northeastern States Field Office (NSFO), BLM, pursuant to the Council on Environmental Quality (CEQ) and Department of the Interior regulations implementing the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4375 (2012); *see* 40 C.F.R. Parts 1500-1508 and 43 C.F.R. Part 46.

For the following reasons, we conclude that Appellants have failed to carry their burden to demonstrate that BLM erred, as a matter of fact or law, in dismissing their protests as untimely. We therefore affirm the ASD's decisions.

BACKGROUND

The private oil and gas industry nominated 27,302 acres of Federal oil and gas resources underlying 21 parcels of split estate (State surface/Federal mineral estate) land (hereinafter, Parcels) for competitive lease sale pursuant to the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-360 (2012). The Parcels, denoted as ES-001-09/13 through ES-021-09/13 (MIES-057798 ACQ through MIES-057818 ACQ), are situated in Ts. 1-3 N., Rs. 14-15 W., and T. 3 N., R. 13 W., Michigan Meridian, Allegan County, Michigan, along the eastern shores of Lake Michigan.[2]

The Parcels encompass lands entirely situated in the 50,000-acre Allegan State Game Area (ASGA). *See* EA at 16, 41. The State-owned surface estate of the Parcels has been designated by the Michigan Department of Natural Resources (MDNR) as "non-development," meaning that "surface occupancy" is precluded. *Id.* at 11. Any oil and gas lease issued by BLM pursuant to the competitive lease sale would include a no-surface occupancy (NSO) stipulation, precluding any drilling or other surface-

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(IBLA 2014-39). By order dated Feb. 11, 2014, we granted BLM's motion to consolidate the three appeals for final resolution on the merits.

[2] At the time of the EA, the Parcels were specifically situated in secs. 1 and 3, T. 1 N., R. 14 W.; secs. 2, 4, 11, and 12, T. 1 N., R. 15 W.; secs. 3-10, 15-29, 33, 34, and 36, T. 2 N., R. 14 W.; secs. 1-3, 10-15, 21, 22, 27, 28, 33, 34, and 36, T. 2 N., R. 15 W.; secs. 7, 8, 18-20, and 30, T. 3 N., R. 13 W.; secs. 11, 12, 14-22, 27, and 29-34, T. 3 N., R. 14 W.; and secs. 13, 14, 22-27, 30, 31, 35, and 36, T. 3 N., R. 15 W., Michigan Meridian, Allegan County, Michigan. In issuing the DR, the ASD decreased the total acreage from 27,302 to 27,212, slightly modifying some of the Parcels.

disturbing activities on the leased lands. *See id.* at 23 ("Because the ASGA will be off-limits to drilling and infrastructure development, the designated wildlife areas will not be directly impacted."), 41.

The NSFO assembled a team of interdisciplinary resource specialists who prepared an EA analyzing the potential environmental impacts of the proposed action, offering the Parcels for competitive lease sale, and a no action alternative, under which no offering would occur. In the EA, the NSFO incorporated three reasonably foreseeable development scenarios (RFDS) (Unsuccessful exploration entailing 10 dry holes on 4 well pads (Low-intensity); Moderate production entailing 25 wells on 10 well pads (Medium-intensity); and High production entailing 50 wells on 17 well pads (High-intensity)). These RFDS predicted, for purposes of the EA, the level of oil and gas drilling and development likely to occur in a 127,000-acre analysis area ("Decision Area") that encompassed the Parcels and a two-mile buffer ("Development Area"). *See* EA at 11, 37 (Figure 1 (Proposed Lease Area, Decision Area, and Development Area)). BLM stated that the well pads would be situated on non-Federal lands outside the Parcels, with the Federal wells being drilled directionally or horizontally into the Parcels, in order to develop the underlying Federal oil and gas resources.[3] *See id.* at 11, 12. Since two miles was deemed "the typical maximum distance that horizontal drilling is economically feasible," all Federal wells were expected to be drilled no more than two miles from the boundary of the Parcels. *Id.* at 13.

The NSFO issued a draft EA on March 26, 2012, for a 30-day public comment period, and posted a notice of the draft EA on the ESO's "Oil and Gas Lease Sale Nominated Parcels public website[.]"[4] Answer at 3. No public comments were submitted. The NSFO issued a final EA on March 22, 2013.

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[3] At the time of preparation of the EA, the wells were expected to target the Collingwood Shale and Trenton-Black River formations, but not the Niagaran and Traverse Group formations. *See* EA at 10. However, with its Answer, BLM submitted the Jan. 3, 2014, Affidavit of Jeffrey L. Nolder, Geologist, NSFO, who states that the wells are expected to target the Niagaran and Traverse Group formations, not the Collingwood Shale and Trenton-Black River formations. *See* Answer at 3-4 (citing Nolder Affidavit).

[4] The posting evidently appeared at http://www.blm.gov/es/st/en/prog/minerals/nominated_parcels.html (last visited Feb. 24, 2016). The website states that, "[d]uring public comment periods, privately owned surface/Federally owned minerals nominated parcels and their recommended stipulations will be posted here for 30 days." In addition, the EA, Finding of No

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In his DR, the ASD approved the proposed offering of the Parcels for competitive oil and gas lease sale, concluding that the offering would "make Federal minerals available for economically feasible development in an environmentally sound manner." DR at unpaginated (unp.) 1. He noted that competitive leases would be issued subject to an NSO stipulation. The ASD concluded that approval of the proposed action conformed to the applicable land-use plan (June 1985 Michigan Resource Management Plan (RMP)), as required by section 302(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(a) (2012). *See id.* The ASD noted that the DR did not authorize any ground-disturbing activities, and that, before doing so, BLM would need to approve an Application for a Permit to Drill (APD), following preparation of a site-specific EA in compliance with NEPA. *See id.*

In the separate FONSI, also dated June 12, 2013, the ASD concluded, based on the analysis of potential environmental impacts in the EA and the context and intensity (or severity) of impacts criteria of 40 C.F.R. § 1508.27, that approving the proposed action was not likely to significantly impact the human environment, and thus BLM was not required to prepare an Environmental Impact Statement (EIS).

The ASD stated, in his DR, that any adversely affected party could appeal a "final decision" to the Board, pursuant to 43 C.F.R. § 4.411(a), "within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision." DR at unp. 2. The DR did not state whether the ASD regarded the DR as a proposed or final decision. However, we deem the DR to constitute a final decision to authorize the offering of Federal oil and gas resources in Allegan County, Michigan, for competitive lease sale. Thus, appellants could have filed appeals from the DR within 30 days of receipt or actual notice of the decision. *See* 43 C.F.R. § 4.411(a); *Nabesna Native Corp., Inc. (On Reconsideration)*, 83 IBLA 82, 83-84 (1984).[5] *See* Answer at 5. No appeals were filed from the DR.

As noted, the ESO issued its Sale Notice on June 14, 2013, notifying members of the public that it was offering a total of 27,905.34 acres in Michigan (27,422) and Mississippi (483.34) for competitive lease sale (Lease Sale), which would be held on

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Significant Impact (FONSI), and DR associated with BLM's proposal to offer the Parcels for competitive lease sale are linked to this website.

[5] BLM posted notice of issuance of the DR and FONSI to the ESO's website. Such notice, together with the associated EA, can be found at http://www.blm.gov/style/medialib/blm/es/milwaukee_general/nepa_documents.Par.98657.File.dat/MI%20Signed%20NEPA%20DOCs%20AlleganCo%209%20EOIs.pdf (last visited Feb. 24, 2016).

September 12, 2013. The Sale Notice stated that all of the Parcels in Michigan would be competitively leased subject to an NSO stipulation. *See* Sale Notice at 12-19 ("Subject to BLM Lease Notice and Stipulations (MI)"), 24 ("No surface occupancy will be permitted on the entire lease"). It described the process for participating in the sale, and the terms and conditions under which the parcels of land included in the Sale Notice would be competitively leased.

The ESO provided in the Sale Notice that the inclusion of any parcel was subject to protest pursuant to 43 C.F.R. § 3120.1-3, and that any protest must be filed within 30 calendar days of the posting of the Sale Notice in the State Office, *i.e.*, on or before July 15, 2013. *See* Sale Notice at 6. The ESO stated: "We will dismiss a late-filed protest[.]" *Id.* The Sale Notice further stated that, upon receipt of a timely protest, BLM would decide whether to go forward with offering the disputed parcel, but that, if it was included in the sale, BLM would resolve the protest before issuing any lease to the highest qualified bidder for the parcel. *See id.* at 7. If the protest was denied, the lease would be issued, and the protestor could file an appeal to the Board. *See id.*

The Davises, Vigneron, and MLAWD filed protests on July 29, July 31, and August 5, 2013, respectively.

In his decisions dated September 6, 2013, the ASD dismissed all three protests because they were "untimely filed."[6] Decision at 1. He explained: "BLM-ES[O] must follow the established rules as they are published in the Notice of Competitive Oil and Gas Lease Sale. BLM-ES[O] cannot accept your protest as it was not submitted in accordance with this sale notice[.]" *Id.* He indicated that the protests would be accepted and considered as comments to the Lease Sale.[7]

Appellants appealed timely from the ASD's decisions.[8] Their primary argument is that BLM's approval of the proposed offering of the Parcels at the Lease Sale violated

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[6] Since the decisions are virtually identical, we cite only to the decision issued to the Davises, unless otherwise noted.

[7] As noted, the competitive lease sale occurred on Sept. 12, 2013. BLM concluded that the protests provided no "new substantive information" warranting further review under NEPA or reconsideration of the decision to offer the Parcels for competitive lease sale. Decision at 1.

[8] On Sept. 5, 2013, the Davises also filed a complaint for declaratory and injunctive relief, styled *Davis v. BLM*, No. 1:13-cv-00971-PLM (W.D. Mich.), with the U.S. District Court for the Western District of Michigan. On Dec. 17, 2013, the District Court

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NEPA. They contend that BLM failed to adequately consider the likely environmental impacts of its action and, since such impacts are likely to be significant, BLM was required to prepare an EIS. Appellants ask the Board, in effect, to rescind the Lease Sale, set aside the DR, and remand the case to BLM with directions to prepare an EIS. *See* Davis Statement of Reasons (SOR) at 3; Vigneron SOR at 2; MLAWD SOR at 3.

BLM conducted the Lease Sale on September 12, 2013, declaring high bidders for the 21 Parcels. We have not been apprised whether oil and gas leases have been issued for any of the Parcels.[9]

DISCUSSION

In the decisions on appeal, the ASD dismissed Appellants' protests rather than adjudicate whether BLM had properly fulfilled its environmental review obligations. Because we affirm BLM's dismissal of their protests as untimely, we conclude that they are not entitled to raise such matters on appeal to the Board.

Under 43 C.F.R. § 4.410(a), the Board's jurisdiction is restricted to resolving an appeal from "a decision of the Bureau," since only "'an identifiable decision'" is subject to appeal by a party to a case who is adversely affected by the decision. *Hacienda del Cerezo, Ltd.*, 135 IBLA 277, 279 (1996) (quoting *Southern Utah Wilderness Alliance*, 122 IBLA 17, 20 (1992)). The BLM decisions now at issue determined only that Appellant's protests were untimely. They did not address whether BLM had complied with NEPA or address any substantive issue concerning the legality or propriety of BLM's decision to lease the Parcels. Thus, the only issue before the Board concerns the timeliness of Appellants' protests.

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entered an order staying further consideration of the case pending the Board's resolution of the current administrative appeal.

[9] The Davises assert that BLM erred in failing to suspend the inclusion of the Parcels in the Lease Sale pursuant to 43 C.F.R. § 3120.1-3. *See* Davis SOR at 2. That regulation provides that the authorized BLM officer may suspend the offering of a specific parcel or parcels in a competitive lease sale "while considering a protest or appeal[.]" 43 C.F.R. § 3120.1-3. Here, the Lease Sale did not occur until after the ASD issued the Sept. 6, 2013, decision, completing his consideration of the Davises' protest. Further, the Lease Sale occurred prior to the filing of the Davises' appeal on Oct. 17, 2013. No protest or appeal was pending consideration by BLM or the Board at the time of the Lease Sale, such that the ASD might suspend offering the Parcels while BLM or the Board considered it.

Appellants all contend that BLM failed to afford the public any notice that BLM owns the oil and gas resources underlying the Parcels; that BLM intended to offer the oil and gas resources for competitive lease sale; that BLM planned to address the likely environmental impacts of leasing the oil and gas resources in an EA; or that BLM had decided to go forward with competitive leasing.[10] *See* Davis SOR at 1-2; Vigneron SOR at 1; MLAWD SOR at 1. Appellants attribute their failure to timely protest BLM's Sale Notice to the fact that BLM did not afford any notice to the public that it was engaged in the preparation of the EA, or was otherwise contemplating offering the Parcels for competitive lease sale. They particularly note that no such notice was "published or available in sources local to the lease sale[.]" Davis SOR at 1; *see* Vigneron SOR at 1 ("I think basic fairness should have required the BLM to provide some notice of its plans in at least one local newspaper"); MLAWD SOR at 1 ("The BLM did not publish any notice locally").

Appellants assert that, in fact, "[t]here is no reason that any member of the public, including the appellants, should have known that BLM holds any interest in land or interests in split-estate mineral rights in Michigan," which were available for Federal oil and gas leasing. Davis SOR at 1; *see* Vigneron SOR at 1 ("I did not know, and had no reason to know, that anyone or any entity other than the State of Michigan owned any part of the [ASGA]"); MLAWD SOR at 1 ("I did not know that the [F]ederal

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[10] In asserting that BLM failed to notify the public that it had issued an EA, FONSI, and/or DR, appellants indicate that BLM violated section 102(2)(C) of NEPA and its implementing regulations. BLM is not specifically required by NEPA's implementing regulations, as adopted by CEQ (40 C.F.R. Chapter V) or the Department of the Interior (43 C.F.R. Part 46), to publish notice of the issuance of an EA, FONSI, or DR in the *Federal Register*. Rather, in addition to generally involving the public in the preparation of an EA, it is required to provide "public notice of . . . the availability of environmental documents[.]" 40 C.F.R. § 1506.6(b); *see* 40 C.F.R. §§ 1500.1(b), 1500.2(d), 1501.4(b), 1506.6(a), 1508.10 ("*Environmental document*" includes an EA or FONSI); 43 C.F.R. § 46.305(a) and (c); *Lynn Canal Conservation, Inc.*, 169 IBLA 1, 5 ("None of the cited CEQ regulations expressly dictate a timetable for public participation in the NEPA process."), 5-7, 7 ("[T]he determination of whether the public was adequately involved must proceed on a case-by-case analysis of the facts.") (2006).

We are satisfied that BLM fulfilled its public participation obligations here by posting notice of the availability of the draft and final EA and the DR and FONSI, in connection with this regularly-scheduled competitive lease sale, on the ESO website. *See* NEPA Handbook H-1790-1 (Rel. 1-1710 01/30/2008), at 76, 83-84, 85. The NEPA Handbook may be found at http://www.blm.gov/style/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.24487.File.dat/h1790-1.pdf (last visited Feb. 24, 2016).

government owned any real estate interests in the [ASGA]—or anywhere in this region of Michigan—until mid-July of 2013."). The Davises note that the Michigan RMP states that BLM has administrative jurisdiction over a total of approximately 3,200 Federal surface/mineral (or public domain) acres and 136,000 non-Federal surface/Federal mineral (or split-estate) acres, *i.e.*, about 0.2% of the total land acreage in the State of Michigan. The Davises add: "This min[u]scule amount of land . . . is not a situation that ordinary citizens, in the position of appellants, would know of." Davis SOR at 1.

The ESO maintains a system of public-land records consisting of "tract books" that have been described as a combination of master title plats (MTPs) and historical indexes (HIs).[11] *B.J. Toohey*, 88 IBLA 66, 101, 92 I.D. 317, 337 (1985) (Burski, A.J., concurring).[12] These tract books not only "enable an individual to discern the present status of a specific parcel of land, but . . . also permit[] the searcher to review the chronology of the land office actions affecting the parcel." *Id.* The MTPs and HIs are deemed to provide notice to all members of the public regarding the status of the public lands.[13] *See B. J. Toohey*, 88 IBLA at 77-82, 92-93, 92 I.D. at 324-26, 332-33; *see also David Cavanagh*, 89 IBLA 285, 297-98 n.7, 299, 92 I.D. 564, 571 n.7, 572 (1985), *aff'd*, *Cavanagh v. Hodel*, No. A86-041 (D. Alaska Mar. 18, 1988); *B.J. Toohey*, 88 IBLA at 101-02, 92 I.D. at 337-38 (Burski, A.J., concurring). The MTPs and HIs were available to Appellants and are deemed to have provided them with adequate notice of the status of the lands subject to the DR and FONSI.

The Davises specifically assert that the 30-calendar day timeframe for filing a protest to BLM's decision to offer the Parcels for sale is not found in the applicable regulation, 43 C.F.R. § 3120.1-3, but only in the Sale Notice, of which they cannot be deemed to have knowledge. *See* Davis SOR at 2. They argue that, since their protests

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[11] *See* 43 C.F.R. § 2091.0-5(e) ("Public land records means the Tract Books, Master Title Plats and Historical Indices maintained by the [BLM], or automated representation of these books, plats and indices on which are recorded information relating to the status and availability of the public lands.").

[12] *Aff'd sub nom.*, *Cavanagh v. Hodel*, No. A86-041 (D. Alaska Mar. 18, 1988).

[13] The Davises assert that BLM is on record as asserting that it "'does not maintain a presence in the State of Michigan,'" having transferred "all remaining public lands in the State of Michigan . . . out of Federal ownership[.]" SOR at 2 (quoting DR (RMP Amendment to Permit Sale of Isolated Parcel of Public Land in Marquette County, Michigan), dated Sept. 14, 2012 (attached to SOR), at unp. 2). BLM clearly meant to note the isolated status of the 0.82-acre parcel of public land remaining in that area of the State, and not the status of all public lands in the State.

were filed more than 30 days before the September 2013 competitive lease sale, "no prejudice" arose as a consequence of the time of filing and, accordingly, BLM should have adjudicated their protests. *Id.*

[1] We agree that 43 C.F.R. § 3120.1-3 provides for the filing of protests in response to notice of a competitive lease sale, but that the regulation does not specify any deadline for filing. *See*, *e.g.*, *Colorado Environmental Coalition*, 173 IBLA 362, 364 (2008); *Wyoming Outdoor Council*, 156 IBLA 377, 382 (2002). Further, under 43 C.F.R. § 4.450-2, a protest is defined as a challenge to "any action proposed to be taken in any proceeding before [BLM]." *See*, *e.g.*, *Peter Paul Groth*, 99 IBLA 104, 108 (1987). Thus, so long as a proposed action has not occurred, a protest challenging that action is timely.

Further, it is well established that, when BLM has not afforded notice of the proposed action to members of the public, BLM may not subsequently dismiss the protest as untimely. *See Peter Paul Groth*, 99 IBLA at 108-10. Rather, we must either set aside BLM's decision and remand the case to BLM for adjudication of the protest, or adjudicate the protest as an appeal. *See Mark Patrick Heath*, 172 IBLA 162, 164-65 (2007); *Liberty Petroleum Corp.*, 118 IBLA 214, 217 (1991). We need do neither here because we conclude that BLM did not err in establishing a deadline in the Sale Notice for the filing of protests, which constituted notification to the public, and that BLM therefore properly dismissed the protests at issue as untimely.

We have long held that BLM may properly dismiss a protest as untimely where the protestant failed to timely file the protest before the proposed action being challenged occurred, as required by 43 C.F.R. § 4.450-2. *See Lazaro Mendieta*, 126 IBLA 394, 397-98 (1993); *Utah Wilderness Alliance*, 91 IBLA 124, 127-28 (1986). Further, BLM may, by decision, establish a reasonable deadline for submission of a required document in connection with a requested action, and, upon the failure to comply by that deadline, deny the requested action, when to do otherwise would prejudice a contravening right. *See*, *e.g.*, *George M. Wilkinson*, 130 IBLA 79, 81 (1994); *Mary Nan Spear*, 101 IBLA 13, 16 (1988); *see also Southern Utah Wilderness Alliance*, 122 IBLA 17, 20 (1992). Thus, we find that BLM may similarly establish, by rule or other public notice, a definite deadline for filing a protest challenging a competitive lease sale, and, upon the failure to submit a protest by that deadline, dismiss the protest as untimely, when to do otherwise would interfere with an upcoming sale. *Cf. Committee for Idaho's High Desert*, 159 IBLA 370, 373-74 (2003) (Board properly dismisses appeal of land exchange for lack of standing to appeal where appellant failed to protest proposed land exchange, as provided by regulation, following public notice of the proposal); *Sierra Club, Grand Canyon Chapter*, 136 IBLA 358, 361-63 (1996) (Board properly dismisses appeal of timber sale as untimely protest where appellant failed to timely protest proposed timber sale, as provided by regulation, following public notice of the proposal); *Idaho Conservation League*,

131 IBLA 11, 12 (1994) (BLM properly rejects a protest of a proposed timber sale filed after the 15-day period provided by regulation, following public notice of the proposal).

In the case of competitive lease sales, which are to be held "at least quarterly if lands are available for competitive leasing," 43 C.F.R. § 3120.1-2(a), BLM must describe the lands available for competitive sale in a "Notice of Competitive Lease Sale." 43 C.F.R. § 3120.4-1. Moreover, 43 C.F.R § 3120.4-2 directs BLM to "post[]," "[a]t least 45 days prior to conducting a competitive auction," the "lands to be offered for competitive lease sale, as included . . . in a Notice of Competitive Lease Sale, . . . *in the proper BLM office* having jurisdiction over the lands[.]"[14] (Emphasis added.) Such posting provides adequate notice to the public of the pending competitive lease sale. *See Deganawidah-Quetzalcoatle University*, 164 IBLA 155, 158 (2004) ("We . . . think that the [appellant] was [by virtue of the posting of the competitive lease sale notice in the BLM office and website, as well as affording appellant's agent with a copy,] provided with more than an adequate opportunity to obtain and review the EA, and otherwise to consider the implications of BLM's decision to lease Parcel CA 6-03-31.").

None of the appellants has established that the Sale Notice was not posted in BLM's ESO on June 14, 2013, or that any of them filed a protest on or before the July 15, 2013, deadline.

In these circumstances, we conclude that the ASD was justified in holding that all three protests were filed after the deadline established in the Sale Notice for the filing of protests, and that he properly dismissed their protests as untimely.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decisions appealed from are affirmed.

/s/
James F. Roberts
Administrative Judge

[14] All members of the public are deemed to have knowledge of what is contained in the Department's regulations. *William Jenkins*, 131 IBLA 166, 168 (1994) (citing *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 384-85 (1947)).

I concur:

/s/
James K. Jackson
Administrative Judge